IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2525 OF 2005

Naigaon Education Society & anr. ... Petitioners

V/s

Smt. P.S. Khandekar & ors. ... Respondents

Ms. A.B. Shah for the petitioners.

Mr. Sunil D. Dighe for the respondent No.1.

Ms. Mugdha Jadhav, A.G.P. for Respondent Nos. 2 & 3.

CORAM: P.V. KAKADE, J.

DATED: 14TH DEC., 2005

P.C.:

1. Heard learned counsel for both parties.

2. Rule. Rule made returnable forthwith.

3. The petition is preferred by the petitioners - Naigaon Education Society against the respondent raising the question that the order passed by the Presiding Officer, School Tribunal, dated 14.10.2005 is illegal and, therefore, should be struck down which came to be passed in Appeal No. 114 of 1999.

4. The order passed by the Tribunal below Exh.1 in the said appeal was to the effect that the proceeding of the domestic enquiry held against the respondent No.1 was held to be vitiated and, therefore, enquiry was directed to be conducted. In the meantime, respondents 1 and 2 in that appeal were directed to lead evidence in that appeal against the appellant and appellant was also given liberty to lead evidence. With these directions vide order dated 9.8.2005, appeal was directed to be disposed of finally.

On 14.10.2005 in the said matter, the Presiding Officer thought it fit to pass further order as follows:-

> "(1) The termination order dated 16.11.1999 is hereby set aside.
>
> (2) Respondent Nos. 1 and 2 are directed to reinstate the appellant to the post of Head Mistress from the date of termination. However, she will be treated under suspension till the outcome of the fresh enquiry.
>
> (3) Respondent Nos. 1 and 2 are directed to

pay subsistence allowance equivalent to 50% of salary last drawn by the appellant from Sept., 2005 till the outcome of the fresh enquiry."

In view of the order passed below application Exh.1 filed by the appellant the above directions are added in the order dated 9.8.2005.

In this situation, it was submitted on behalf of the petitioners that under the provisions of Sec.12 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 Act, no review of the order is permitted. The said provision reads as under :-

"Sec.12:- Decision of Tribunal to be final and binding. Sec.12:-

Notwithstanding anything contained in any law or contract for the time being in force, the decision of the Tribunal on an appeal entertained and disposed of by it shall be final and binding on the employee and the Management; and no suit, appeal or other legal proceeding shall lie in any Court, or before any other Tribunal or authority, in respect of the matters decided by the

Tribunal."

In view of this position, the subsequent order dated 14.10.2005 issuing order of reinstatement and subsequent deemed suspension and direction regarding payment of subsistence allowance, according to the learned counsel for the petitioner, is outside the perview of the said provision and, therefore, cannot be passed by the Tribunal as a part of the addenda of the earlier order dated 9.8.2005.

5. The learned counsel for the respondents took me through various rulings of this Court as well as the Supreme Court. However, I am satisfied that those are not applicable to the present case. The simple question in this matter is, whether the review of the earlier order is permissible by virtue of any provision of the said Act, and the answer is firmly in the negative. Under the circumstances, the order dated 14.10.2005 which is passed is required to be struck down especially when it was not passed after holding due enquiry. Rulings relied upon on behalf of the respondents are to the effect that further enquiry in the matter is not prohibited. In my view, there cannot be two opinions regarding this aspect, however, the subsequent order

dated 14.10.2005 is not contemplated under the said rulings, but the order is nothing but an addenda or an addition giving totally different reliefs, which, in my view, is not permissible as continuation of order dated 9.8.2005.

Therefore, taking into account the relevant facts and circumstances, I hold that the order dated 14.10.2005 is required to be set aside. However, at the same time, taking into account the argument advanced on behalf of the respondents, it must be noted that the enquiry is required to be expedited as it is submitted that the respondent has no other means of livelihood.

In view of this position, the Rule is made absolute. The order dated 14.10.2005 is hereby set aside.

The Presiding Officer of the School Tribunal, Mumbai, is hereby directed to conduct the fresh enquiry as directed by earlier order dated 9.8.2005.

It is made clear that the issues regarding direction for reinstatement and consequent reliefs are left open to be determined by the concerned authority after giving an opportunity to both sides to lead evidence, if any. The

enquiry to be completed within six weeks from the date of receipt of the writ from this Court.

It is further directed that, in the meantime, the petitioner shall deposit the back wages of the respondent No.1 with the School Tribunal from the date of termination till the date of order dated 9.8.2005 within four weeks.

With these directions, the matter stands disposed of with no order as to costs.

Parties to act on the authenticated copy of this order.

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